

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-0106-PST-E TCEQ ID: RN101809184 CASE NO.: 32437**  
**RESPONDENT NAME: Eufrocina Merino dba Roslyn Food Mart**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Roslyn Food Mart, 234 South Main Street, Vidor, Orange County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retails sales of gasoline</p> <p><b>SMALL BUSINESS:</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> No complaints were received. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on May 28, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;"><b>TCEQ Attorney/SEP Coordinator:</b> None</p> <p style="margin-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896</p> <p style="margin-left: 20px;"><b>Respondent:</b> Ms. Eufrocina Merino, Owner, Roslyn Food Mart, 1475 Washington Boulevard, Beaumont, Texas 77705</p> <p style="margin-left: 20px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> December 6, 2006</p> <p><b>Date of NOE Relating to this Case:</b> January 18, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation. One violation was documented.</p> <p><b>WASTE</b></p> <p>Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p><b>Total Assessed:</b> \$3,900</p> <p><b>Total Deferred:</b> \$780  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$500                      (the remaining \$2,620 to be paid in 10 monthly payments of \$262 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that Ms. Merino implemented a release detection method for all USTs at the Facility on March 13, 2007 after the initial settlement offer.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	22-Jan-2007	Screening	25-Jan-2007	EPA Due	
	PCW	13-Mar-2007				

## RESPONDENT/FACILITY INFORMATION

Respondent	Eufrocina Merino dba Roslyn Food Mart		
Reg. Ent. Ref. No.	RN101809184		
Facility/Site Region	10- Beaumont	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	32437	No. of Violations	1	
Docket No.	2007-0106-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya	
Multi-Media		EC's Team	EnforcementTeam 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 **\$2,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 56% Enhancement Subtotals 2, 3, & 7 **\$1,400**

Notes

Enhancement for three NOV's without a same or similar violation and two prior enforcement orders containing a denial of liability, and a poor performer classification.

**Culpability**

No

0% Enhancement

Subtotal 4 **\$0**

Notes

The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply**

0% Reduction

Subtotal 5 **\$0**

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The respondent came into compliance on March 13, 2007, after the initial settlement offer.

0% Enhancement\*

Subtotal 6 **\$0**

Total EB Amounts

\$20

Approx. Cost of Compliance

\$1,500

\*Capped at the Total EB \$ Amount

### SUM OF SUBTOTALS 1-7

Final Subtotal **\$3,900**

### OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount **\$3,900**

### STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty **\$3,900**

### DEFERRAL

20%

Reduction

Adjustment **-\$780**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

### PAYABLE PENALTY

**\$3,120**

Screening Date 25-Jan-2007

Docket No. 2007-0106-PST-E

PCW

Respondent Eufrocina Merino dba Roslyn Food Mart

Policy Revision 2 (September 2002)

Case ID No. 32437

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101809184

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 46%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

## &gt;&gt; Compliance History Summary

## Compliance History Notes

Enhancement for three NOVs without a same or similar violation and two prior enforcement orders containing a denial of liability, and a poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 56%

Screening Date 25-Jan-2007

Docket No. 2007-0106-PST-E

PCW

Respondent Eufrocina Merino dba Roslyn Food Mart

Policy Revision 2 (September 2002)

Case ID No. 32437

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101809184

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

50 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single-event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the investigation date of December 6, 2006 to the screening date of January 25, 2007.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$20

Violation Final Penalty Total \$3,900

This violation Final Assessed Penalty (adjusted for limits) \$3,900

## Economic Benefit Worksheet

**Respondent:** Eufrocina Merino dba Roslyn Food Mart  
**Case ID No.:** 32437  
**Reg. Ent. Reference No.:** RN101809184  
**Media:** Petroleum Storage Tank  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	6-Dec-2006	13-Mar-2007	0.3	\$20	n/a	\$20

Notes for DELAYED costs:

Estimated cost to provide release detection for the UST system. Date Required is the date of Investigation. Final Date is the date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance

\$1,500

TOTAL

\$20

# Compliance History

Customer/Respondent/Owner-Operator:	CN602887390	MERINO, EUFROCINA	Classification: POOR	Rating: 49.10
Regulated Entity:	RN101809184	ROSLYN FOOD MART	Classification: POOR	Site Rating: 49.10
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	44519
Location:	234 S MAIN ST, VIDOR, TX, 77662		Rating Date: September 01 06 Repeat Violator: NO	
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	January 23, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 23, 2002 to January 23, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Rajesh Acharya		Phone:	(512) 239-0577

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Merino, Eufrocina
4. If Yes, who was/were the prior owner(s)? RFK Enterprises, Inc.
5. When did the change(s) in ownership occur? 07/11/2005

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- N/A Effective Date: 10/10/2005 ADMINORDER 2002-1121-PST-E
- Classification: Moderate
- Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)  
30 TAC Chapter 115, SubChapter C 115.246(7)[G]  
5C THC Chapter 382, SubChapter A 382.085(b)
- Description: Failed to maintain the results of testing conducted at the Station and to maintain all vapor recovery records.
- Classification: Moderate
- Citation: 30 TAC Chapter 115, SubChapter C 115.245(3)  
5C THC Chapter 382, SubChapter A 382.085(b)
- Description: Failure to successfully perform 5 year testing to verify proper operation of the Stage II System.
- Classification: Moderate
- Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)[G]  
5C THC Chapter 382, SubChapter A 382.085(b)
- Description: Failure to maintain vapor recovery system free from defects that would substantially impair the system in reducing refueling vapors.
- Effective Date: 04/21/2002 ADMINORDER 2001-0835-PST-E
- Classification: Moderate
- Citation: 2C TWC Chapter 20, SubChapter A 26.3467(a)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)
- Description: Failure to make available to a common carrier a valid, current TNRCC delivery certificate before delivery of a regulated substance into the UST(s) can be accepted.
- Classification: Moderate
- Citation: 2C TWC Chapter 20, SubChapter A 26.346(a)  
30 TAC Chapter 334, SubChapter A 334.8(c)(4)(B)
- Description: Failure to ensure the UST registration and self-certification form is fully and accurately completed and submitted to the TNRCC in a timely manner.
- Classification: Moderate
- Citation: 30 TAC Chapter 37, SubChapter I 37.815(b)(1)
- Description: Failure to demonstrate the required financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by releases arising from the operation of petroleum USTs.
- Classification: Moderate
- Citation: 2C TWC Chapter 20, SubChapter A 26.3475[G]





30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failure to provide proper release detection for UST systems.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.50(b)(2)[G]

Description: Failure to provide proper release detection for the piping associated with UST systems.

Classification: Moderate

Citation: 2C TWC Chapter 20, SubChapter A 26.3475[G]

30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)

Description: Failure to test a line leak detector at least once per yr for performance and operational reliability.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)

30 TAC Chapter 334, SubChapter C 334.50[G]

Description: Failure to conduct effective manual or automatic inventory control procedures for all UST systems at retail service stations.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

1	07/02/2002	(IE0013893003003)
2	09/09/2004	(289034)
3	01/18/2007	(533602)
4	04/07/2003	(348834)
5	02/25/2003	(275812)
6	08/26/2002	(4658)
7	11/03/2004	(333700)
8	05/11/2006	(458651)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/11/2006 (458651)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)

Description: Failure to maintain a record of any maintenance conducted at the facility relating to Stage II.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

Description: Failure to maintain a copy of the applicable California Air Resource Board (CARB) Executive Order.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)[G]

Description: Failure to operate Stage II system in accordance with the applicable CARB Executive Order.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(1)

Description: Failure to conduct daily inspections.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)

Description: Failure to conduct monthly inspections.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)

Description: Failure to ensure that any residue from stored regulated substances which remain in a temporarily out of service UST shall not exceed 2.5 centimeters at the deepest point and shall not exceed 0.3 percent by weight of the system at full capacity.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)[G]

Description: Failure to assure that, with the exception of vent lines, all piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)



Description: Failure to provide amended registration for any change or additional information regarding USTs  
 Date: 02/25/2003 (275812)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]  
 30 TAC Chapter 37, SubChapter I 37.815(b)[G]  
 Description: Failure to provide acceptable financial assurance  
 Date: 11/04/2004 (333700)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)  
 Description: Failure to maintain a record of any maintenance conducted at the facility relating to Stage II.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)  
 Description: Failure to maintain a copy of the applicable California Air Resource Board (CARB) Executive Order.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)[G]  
 Description: Failure to operate Stage II system in accordance with the applicable CARB Executive Order.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter C 115.244(1)  
 Description: Failure to conduct daily inspections.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)  
 Description: Failure to conduct monthly inspections.

F. Environmental audits.  
 N/A

G. Type of environmental management systems (EMSs).  
 N/A

H. Voluntary on-site compliance assessment dates.  
 N/A

I. Participation in a voluntary pollution reduction program.  
 N/A

J. Early compliance.  
 N/A

Sites Outside of Texas  
 N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
EUFROCINA MERINO DBA ROSLYN  
FOOD MART  
RN101809184**

**§           BEFORE THE  
§  
§           TEXAS COMMISSION ON  
§  
§  
§           ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-0106-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Eufrocina Merino dba Roslyn Food Mart ("Ms. Merino) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Ms. Merino appear before the Commission and together stipulate that:

1. Ms. Merino owns and operates a convenience store with retail sales of gasoline at 234 South Main Street in Vidor, Orange County, Texas (the "Facility").
2. Ms. Merino's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Ms. Merino agree that the Commission has jurisdiction to enter this Agreed Order, and that Ms. Merino is subject to the Commission's jurisdiction.
4. Ms. Merino received notice of the violations alleged in Section II ("Allegations") on or about January 23, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ms. Merino of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Nine Hundred Dollars (\$3,900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Ms. Merino has paid Five Hundred Dollars (\$500) of the administrative penalty and Seven



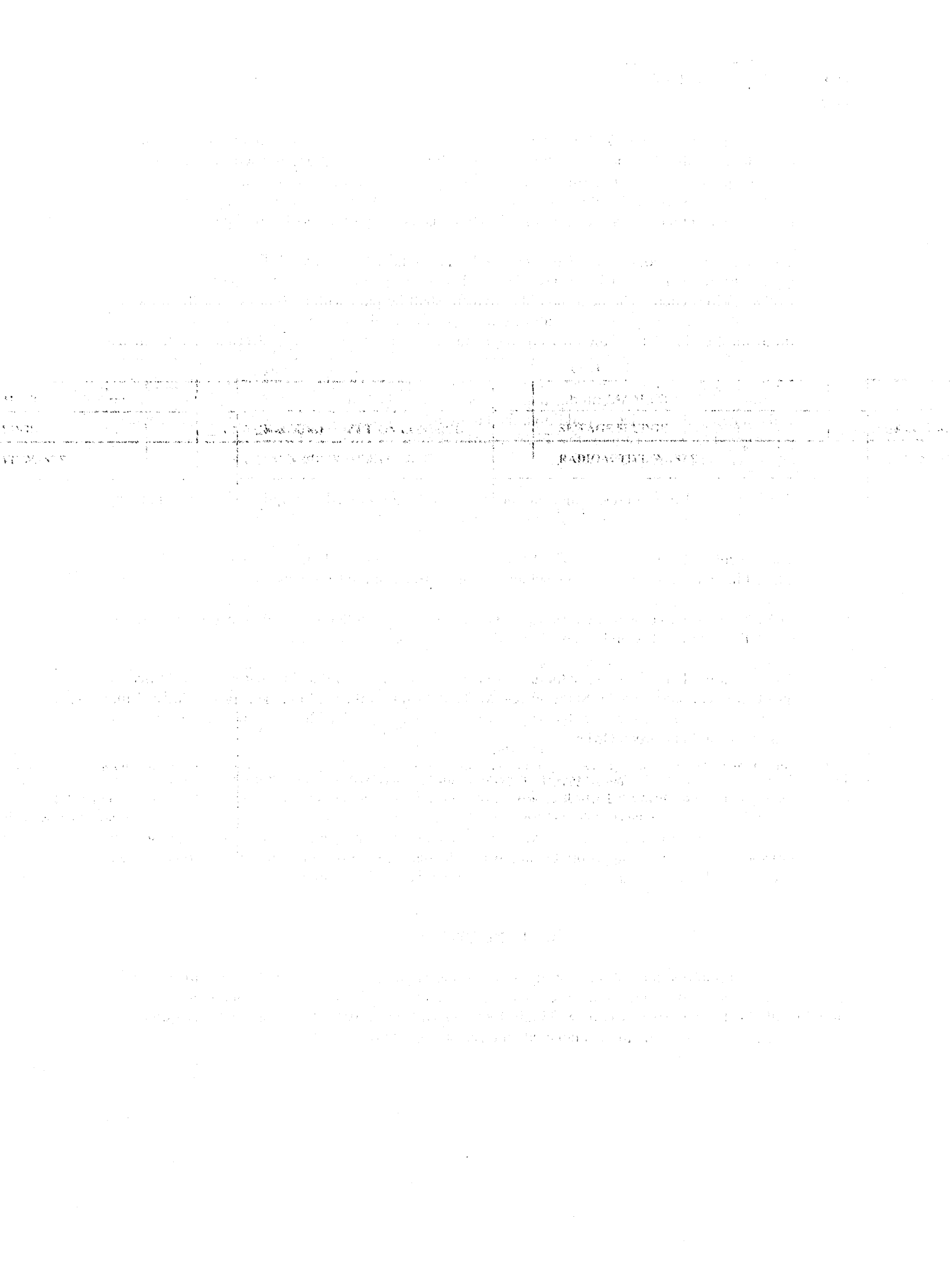
Hundred Eighty Dollars (\$780) is deferred contingent upon Ms. Merino's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Ms. Merino fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Ms. Merino to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Six Hundred Twenty Dollars (\$2,620) of the administrative penalty shall be payable in 10 monthly payments of Two Hundred Sixty-Two Dollars (\$262) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Ms. Merino fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Ms. Merino to meet the payment schedule of this Agreed Order constitutes the failure by Ms. Merino to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Ms. Merino have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Ms. Merino implemented a release detection method for all USTs at the Facility on March 13, 2007 after the initial settlement offer.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Ms. Merino has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, Ms. Merino is alleged to have failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on December 6, 2006.





### III. DENIALS

Ms. Merino generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Ms. Merino pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ms. Merino's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Eufrocina Merino dba Roslyn Food Mart, Docket No. 2007-0106-PST-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon Ms. Merino. Ms. Merino is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. If Ms. Merino fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Ms. Merino's failure to comply is not a violation of this Agreed Order. Ms. Merino shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Merino shall notify the Executive Director within seven days after Ms. Merino becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Ms. Merino shall be made in writing to the Executive Director. Extensions are not effective until Ms. Merino receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against Ms. Merino in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.



7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Ms. Merino, or three days after the date on which the Commission mails notice of the Order to Ms. Merino, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

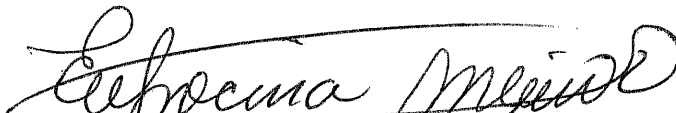
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\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

3-23-07  
\_\_\_\_\_  
Date

EUFROCINA MERINO  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Eufrocina Merino dba Roslyn Food Mart

owner  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

